

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ANASTACIO BALDERAS,**

**Plaintiff,**

**vs.**

**Civ. No. 09-632 WJ/RLP**

**CFI, KNIGHT, ENGLAND, JB HUNT,  
SWIFT TRANSPORT, RUSSELL TRANSPORT,**

**Defendants.**

**MAGISTRATE JUDGE’S ANALYSIS AND RECOMMENDED DISPOSITION**<sup>1</sup>

This matter comes before the Court on Plaintiff’s Motion to proceed *in forma pauperis*, pursuant to 28 U.S.C. §1915. (Docket No. 3). The evaluation of this motion includes consideration of whether the action “is frivolous or malicious, . . . fails to state a claim on which relief may be granted; . . . or seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §1915(e)(2)(B); see Hall v. Bellmon, 935 F.2d 1106, 1109-1110 (10<sup>th</sup> Cir. 1991). Dismissal of a complaint under 28 U.S.C. §1915(e) is appropriate only if, accepting as true all facts alleged, Plaintiff has not plead enough facts to state a claim for relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556 (2007).

Plaintiff appears *pro se*. Accordingly, the court must construe his complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir.1991). However, the court should not be the *pro se* litigant's advocate. See Hall, 935 F.2d at 1110. The court “will not supply additional factual allegations to round out a plaintiff's complaint or construct a legal theory on a plaintiff's behalf.” Whitney v. New Mexico, 113 F.3d 1170,

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<sup>1</sup>Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by within ten (10) days of service of this Report and Recommendation, in accordance with 28 U.S.C. § 636. The failure to timely object to this Report and Recommendation waives appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir.1991).

1173-1174 (10th Cir.1997).

Plaintiff alleges that Defendants published defamatory information about him<sup>2</sup>, thereby violating his civil liberties and constitutional rights pursuant to 42 U.S.C. §1983. After liberally construing the Complaint, I find that the relief sought by Plaintiff is improperly brought under 42 U.S.C. § 1983, and therefore recommend that Plaintiff's Complaint be dismissed without prejudice.

Section 1983 provides a cause of action against state officials for a violation of a plaintiff's

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<sup>2</sup>Plaintiff attached to his Complaint a computer printout indicating that the following information was provided by Defendants to HireRight/DAC Trucking:

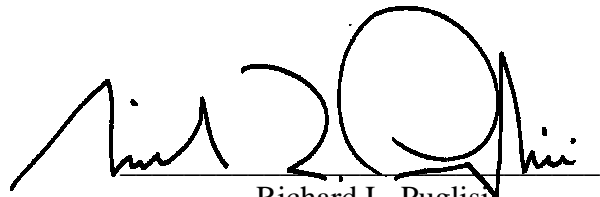
Company	Period of service	Eligible for rehire	Reason for leaving	Work Record	Accidents	Drug results disclosure
Swift Transportation	1/2006 - 6/2006	No	Resigned, quit or Driver terminated lease	Satisfactory	DOT: 0 non DOT: 0	
JB Hunt Transportation	7/2006 - 7/2006	Review required before rehire	Discharged or company Terminated lease	Quit/ dismissed during training, orientation	DOT: 0 non DOT: 0	
CR England Inc	7/2006 - 5/2007	Review required before rehire	Resigned, quit or driver terminated lease	Other	DOT: 0 non DOT: 0	preemploy-ment screening
Knight Transportation	7/2007 - 11/2007	No	Discharged or company terminated lease	Company Policy Violation	DOT: 0 non DOT: 0	
Contract Freighters Inc.	1/2008 - 4/2008	Review required before rehire	Discharged or company terminated lease	Company Policy Violation	DOT: 0 non DOT: 1	

constitutional rights. Becker v. Kroll, 494 F.3d 904, 914 (10th Cir.2007). To state a claim, plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated and (2) that the alleged violation was committed by a person acting under the color of state law. Anderson v. Suiters, 499 F.3d 1228, 1232-33 (10th Cir.2007).

The defendants are trucking companies who employed Plaintiff in the past. There is no allegation that any defendant is a state actor, or acted under color of state law. For that reason Plaintiff's Complaint fails to state a claim upon which relief may be granted.

**Recommended Disposition**

Accordingly, it is recommended that the Complaint be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).



Richard L. Puglisi  
United States Magistrate Judge